



Enclosure 4.0

Work contract

Contract number: XXX

entered into between

the Swiss Confederation

represented by

armasuisse
Purchasing + Cooperations competence sector
Guisanplatz 1
3003 Bern, Switzerland
Telephone +41 (0)58 XXX

hereinafter referred to as

Customer

and the company

XXX
XXX
XXX
Telephone +XX (X) XX XXX

hereinafter referred to as

the Contractor

concerning

Procurement RADAR Data Surface Movements

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Preamble

The Swiss Federal Office of Topography (swisstopo) is the federal competence center for geodata. Its areas of responsibility include the national survey and coordinating federal activities regarding geodata and geo services. swisstopo provides its partners and customers with current, high-quality spatial reference data for the entire area of Switzerland and offers its products, for example, in the form of printed or digital national maps, as 3D models and web services. The Office is also the specialist authority of the government for geology and the leading supervisory authority for official cadastral surveying.

Protecting the population and its livelihood from natural hazards is one of the central tasks of the state. Efficient prevention, preparation and intervention measures can be used to prevent or at least limit potential material damage and fatalities as a result of natural hazards. Warnings and alerts are particularly cost-effective instruments for reducing damage, as they allow emergency personnel and the population to take the prepared measures.

The Swiss Federal Office of Topography (swisstopo) thus procures processed InSAR data for recognising changes in the terrain of the whole of Switzerland.

The provision of these services is governed by this contract between the Customer and the Contractor.

Article 1: Contractual performance and price

1.1 The Contractor commits, as a specialist in the area of InSAR data processing and the required works, and in the knowledge of the objective and purpose, to provide all the services described in this work contract (Art. 363 et seq. of the Swiss Code of Obligations) according to the Technical Specifications publication SIMAP XXX of XXX (Annex II) and the offer of XXX (Annex III) as follows:

The following data must be delivered as service packages in a standardised GIS format:

- Level 2a: Line of Sight (LOS) surface movement history in radar geometry with meta data according to Annex II for each measurement point and time.
- Level 2b: LOS surface movement history in map geometry with meta data according to Annex II for each measurement point and time.
- Level 3: Surface movements in an east-west and vertical direction based on the combination of overlapping ascending and descending scenarios.
- The Level 2a and Level 2b products should be delivered here as point data and Level 3 products as grid data.
- The Contractor must delete the data and resources provided by the requesting unit in this project after completion of the work and may not use them for any other purposes. The Contractor shall send unrequested the execution notification of the deletion to the requesting unit.

1.2 The following tariffs will be defined for the individual service packages:

| Service package | Total price per service package in CHF, excluding VAT |
|---|---|
| Basic Contract | |
| Preparatory work | XXX |
| 1st delivery, 01/11/2021 | XXX |
| Annual update, 31/12/2021 | XXX |
| Annual update, 31/12/2022 | XXX |
| Annual update, 31/12/2023 | XXX |
| Total service package Basic Contract | XXX |

| Service package | Total price per service package in CHF, excluding VAT |
|---|---|
| Option "Time delay" | |
| Annual update, 31/12/2024 | XXX |
| Annual update, 31/12/2025 | XXX |
| Total service package "Time delay" | XXX |

| Service package | Total price per year in CHF, excluding VAT |
|--|--|
| Option "More frequent deliveries" | |
| Delivery every ≤ 30 days (Maximum time delay of 14 week days between last receipt and delivery) | XXX |

These tariffs include all expenses, additional outlays, secretarial work as well as costs of copies and the Contractor's working documents. Prices do not include VAT.

1.3 The Contractor is entitled to use additional specialists if necessary. Their assignment must be approved in writing by the requesting unit and is the responsibility of the contractor. The requesting unit must be consulted before assignment of the order.

Article 2: Deadlines and defaults

2.1 The contractual performance specified in Article 1: The contractual performance and price must be provided in the period from 15/07/2021 to 31/12/2023 (according to Annex II). Here, the following deadlines are considered as critical milestones (these are decisive for calculating any contractual penalty according to Article 3: Contractual penalty):

The following delivery dates are agreed for the partial services of the various service packages:

| Critical milestone Service package Basic term | Deadline | Payments in % of total according to Article 1.2 in CHF, excluding VAT |
|---|------------|--|
| Start with preparatory work | 15/07/2021 | 15% |
| 1st delivery | 01/11/2021 | 25% |
| Annual update | 31/12/2021 | 20% |
| Annual update | 31/12/2022 | 20% |
| Annual update | 31/12/2023 | 20% |

| Critical milestone service package option "Time delay" | Deadline | Payments in % of flat-rate according to Article 1.2 in CHF, excluding VAT |
|---|------------|--|
| Annual update | 31/12/2024 | 50% |
| Annual update | 31/12/2025 | 50% |

| Critical milestone service package option "More frequent deliveries" | Deadline | Price per year in CHF, excluding VAT |
|---|--|---|
| Delivery every ≤ 30 days | Between 15/07/2021 and 31/12/2025 | XX |

- 2.2 Deadlines are considered met if the contractual performance is ready for acceptance by the date defined in Article 2: Deadlines and defaults and is subsequently accepted and approved.
- 2.3 The deadlines agreed in this contract and its annexes for the delivery of the agreed works as well as for the performance of the agreed services by the Contractor shall be binding and may only be changed if the Customer provides signed approval in advance as set out in Article 29: General contract amendments.
- 2.4 If the Contractor wishes to provide the service before the agreed date, it must apply to the requesting unit in writing in this regard. The parties shall jointly check whether early delivery is possible.

- 2.5 If the Contractor fails to fulfil the contract by an agreed deadline or does not meet the conditions set out in the contract, the Contractor shall automatically default on this day without the Customer having to issue a warning to this effect. In this instance, the Customer shall have the right to immediately suspend all further payments according to Article 1: Contractual performance and price, without falling into arrears themselves. Thereafter, the Customer shall – subject to there being no rulings to the contrary in the individual case – set the Contractor a time limit of 30 days to subsequently fulfil the contract. If the Contractor does not fulfil the contract before the end of this extended deadline either, the Customer shall be entitled to completely or partly withdraw from the contract with retroactive effect from the time at which the contract was concluded (“*ex tunc*”). The right of withdrawal must be asserted within 30 days by means of written notice to the Contractor. In such a case, the Contractor is obliged to refund the Customer all down-payments including interest at 1% for the parts of the contractual performance affected by withdrawal from the contract within a maximum of 30 days of notification of withdrawal.
- 2.6 After full indemnification of the Customer, any property rights to the work results shall automatically pass back to the Contractor as set out in Article 18: Rights to the work product (intellectual property). The Customer's other statutory or contractual rights with regard to defects shall remain reserved.
- 2.7 Claims for compensation arising from delayed provision of services by the Contractor shall be based on the provisions of the Swiss Code of Obligations; Article 3: Contractual penalty remains reserved.

Article 3: Contractual penalty

- 3.1 In the event of default, the Contractor shall pay a contractual penalty of 5% of the value of the delayed delivery or service, calculated respectively based on each full month of delay from the date of the agreed delivery/performance deadline, but no more than 15% of the value of the delayed delivery/service.
- 3.2 The payment of the contractual penalty shall not release the Contractor from its obligation to fulfil the performance of the contract.
- 3.3 The Customer shall be entitled to demand or charge the contractual penalty in full or in part at any time. If the Customer does not utilise this right immediately, this shall not constitute a waiver of the right to assert the contractual penalty at any time. A waiver may only be assumed if the contractual penalty has not been demanded within a maximum of three months after the complete performance of the contract.
- 3.4 The right to assert claims for damages remains explicitly reserved if the contractual penalty is not sufficient to cover the damage and the Contractor cannot prove that it is not at fault.
- 3.5 In cases of force majeure, no contractual penalties shall be owed.

Article 4: Force majeure

- 4.1 Force majeure is defined as any external circumstances that could not be prevented from occurring or averted by the Contractor despite it taking all reasonable measures in good time. Strikes and lock-outs shall only be considered as force majeure if these make it impossible for the Contractor to fulfil the performance of the contract in good time.

- 4.2 Should the Contractor assert a force majeure claim in connection with its subcontractors defaulting, the Customer will only recognise the invocation of such grounds by the Contractor if the same conditions apply as those that apply to the Contractor in accordance with Art. 4.1.
- 4.3 In the event that deadlines are missed as a result of a force majeure event, the deadlines shall be postponed according to Article 2: Deadlines and defaults correspondingly, but for no longer than six months. Once this deadline has passed, the Customer shall be entitled to withdraw from the contract and may:
- 4.3.1 Demand the reimbursement of any down-payments or payments including 1% interest from the Contractor, insofar as these relate to the contractual services not yet properly performed, as well as
- 4.3.2 Accept the contractual services completed up to this point in time at the prices set out in Article 1: Contractual performance and price, provided it has use for these. The Customer's right to reimbursement in accordance with Art. 4.3.1 can in such cases be reduced by the amount of the contractual objects accepted by the Customer.

Article 5: Point of contact

- 5.1 The point of contact for all matters relating to this contract, including the sending and issuing of notifications, enquiries and similar, is as follows:

- for the Customer:

armasuisse

Purchasing and Cooperations competence sector

XXX

Guisanplatz 1

3003 Bern, Switzerland

Telephone: +41 (0)58 XXX XX XX

Email: XXX

- for the Contractor:

XXX

XXX

XXX

XXX

Telephone: +41 (0)XX XXX

Email: XXX

- for the requesting unit:

Federal Office of Topography

swisstopo

Crisis information and NPOC

XXX

Seftigenstrasse 264

3084 Wabern

Telephone: +41 (0)XX XXX

Email: XXX

Article 6: Reporting

- 6.1 The progress of the provision of services according to Article 1: Contractual performance and price must be recorded by the Contractor in written interim reports as well as written final reports, according to the following criteria and submitted to the requesting unit. These reports must be written in English. In addition, the Contractor shall inform the requesting unit of all shortcomings and risks as soon as they become known to them, such as gaps in the satellite data, challenges in calculation, requirements with regard to external data from the requesting unit, possible measures for reducing consequences, if agreed deadlines cannot be adhered to, etc.
- 6.1.1 **Interim quality reports:** A quality control procedure running continuously during the production process with interim quality reports for submission to the consumer is expected. The Contractor shall guarantee at least half-yearly reports on the status of production, including documentation and presentation on quality control. In the event of deliveries with shorter intervals, changes to the production parameters must also be documented in a report.
- 6.1.2 **Reporting with deliveries and project completion:** The contractor shall submit the following documents to the requesting unit together with the initial delivery and the intermediate deliveries which are to be made at least once a year, as well as at completion of the project:
- A technical report in English on the entire project in digital form (PDF). This report shall contain the description of all processing steps and procedures as well as the citation of the algorithms and programmes which have been used for processing the SAR scenes and for manufacturing the products, and includes at least the points listed in Annex II under Section 2.2.4.
 - All documents which serve to verify the quality of the processed surface movement products, in particular those to verify the height and position accuracy (Annex II, Section 2.4.1.).

Article 7: Changes to the scope of supply, technical changes and improvements (change management)

- 7.1 At any point during the provision of the contractual services, the Customer may propose changes be made to the agreed services, including the obligations to cooperate. Should the Customer make such proposals for changes, the Contractor must notify the Customer as quickly as possible in writing as regards whether the changes are possible and the effects that they will have on the contract, particularly on the deadlines and costs.
- 7.2 The receipt of a proposal for change by the Customer and the ensuing provision of a statement by the Contractor do not entitle the Contractor to halt or delay the project, unless this has been explicitly agreed in writing by the parties.
- 7.3 The Contractor is obliged and the Customer entitled to submit all technical changes and improvements to the contractual implementation provisions in writing during and after the performance of the contract so that they can be reviewed before being executed by the other party.

- 7.4 The execution of such changes or improvements shall only be binding for the parties if they have been set in place in the form of a written addendum to this contract prior to the initiation of this measure. Until then, this contract shall continue to apply without changes, whereby the Contractor is not entitled to make any foreseeable changes or improvements that would cause the obsolescence of already agreed services.
- 7.5 Any changes or modifications to the agreed contractual services set out in Article 1: Contractual performance and price, which are necessary for the fulfilment of the contractually determined specifications shall be borne in full by the Contractor.
- 7.6 The implementation of changes to the scope of services, technical changes and improvements in accordance with this article shall not release the Contractor from its responsibility of fulfilling the contract.

Article 8: Technical documents, documentation and material master data

- 8.1 All processing steps and external data which is used to process the SAR scenes and to manufacture the point products must be described and documented in English. This report must be made available to the consumer from the first data delivery for quality control purposes and acceptance, at the same time as the data delivery, in digital form (PDF).

At least the items set out in Annex II, Article 2.2.4 must be documented for the various products in Levels 2a, 2b and 3, with regard to the methodology chosen.

Article 9: Right of access

- 9.1 The representatives of the Customer shall have free access to all of the rooms in which the contractual performance is manufactured, tested or stored, in order to carry out inspections and audits after having been properly identified. This personnel must be provided with all information requested in connection with the contractual services as well as the requested documents.
- 9.2 The Contractor's personnel may only access the Customer's facilities and premises with the prior written consent of the Customer. The Contractor shall, if requested by the Customer, provide the details of its personnel for clearance.

Article 10: Quality management

- 10.1 The Contractor must maintain an in-house system for quality assurance of data processing and derivation of the surface movements by means of InSAR.

Article 11: Quality inspection and acceptance

- 11.1 The contractual performance will be approved according to the procedure described in Annex II and will be performed by the requesting unit at the place of performance in Wabern.
- 11.2 All of the costs incurred for the Customer as a result of the quality inspection and the acceptance test shall be included in the price set out in Article 1: Contractual performance and price.
- 11.3 The result of the acceptance inspection shall be confirmed in writing to the Contractor by means of a signed acceptance inspection report.
- 11.4 If the contractual performance fulfils all of the conditions of the quality and acceptance inspection carried out by the requesting unit, the performance shall be considered as accepted.

- 11.5 If the contractual performance does not fulfil the quality requirements or the tests and thus the contractual specifications, the requesting unit shall reject the contractual performance and shall, in joint agreement, set a date for the rectification of the shortcomings and the repetition of the tests. The Contractor shall bear all costs incurred by the Customer for this repetition of the tests.
- 11.6 Should the contractual performance not fulfil the conditions of the contractual specifications or acceptance test and the attempts to make improvements as set out in Art. 11.5 are not successful, the Customer shall be entitled to withdraw from the contract immediately. The consequences of such a withdrawal are based on the provisions set out in Article 2: Deadlines and defaults.

Article 12: Place of fulfilment and the transfer of use and risk

- 12.1 The place of fulfilment for the contractual performance according to Article 1: Contractual performance and price is Wabern. From this location, the Customer shall bear responsibility for the use and risk of the contractual performance.

Place of fulfilment for the documentation according to Article 1.2 is Wabern.

Article 13: Invoicing and payment

- 13.1 The Contractor shall invoice the federal administration electronically by e-billing.

Information from the federal administration on e-billing can be found at:
<http://www.e-rechnung.admin.ch>

E-bills must contain the following information:

Reference number (Purchase order number 570300....): according to call-off order

Missing information will mean that the invoice documents cannot be processed.

The billing address is:

swisstopo
c/o Kreditoren VBS
Postfach
CH-3003 Bern
Email address for invoices: pdf-rechnung-swisstopo.astab@vtg.admin.ch

Article 14: Acceptance of the contractual performance by the Customer and payment

- 14.1 If the contractual performance is accepted in full in accordance with Article 11: Quality inspection and acceptance and the other contractually agreed additional services have also been carried out, the accepted element of performance shall be considered accepted or approved. The goods shall be considered accepted at the latest upon payment.

- 14.2 The requesting unit shall render payment for the accepted element of performance as follows:
- Payments in accordance with the deliveries made and services performed will be issued within 30 days of confirmed acceptance and receipt of the Contractor's invoice by the Customer.
- 14.3 The Contractor shall only issue invoices for deliveries or services for which it has received call-off order(s) and shall make reference to the call-off order(s) during invoicing.

Article 15: Warranty of title (no breaches of the rights of third parties)

- 15.1 In its capacity as a specialist and knowing the intended purpose of the contractual services agreed in Article 1: Contractual performance and price, the Contractor shall warrant and guarantee that the services are for all intents and purposes free from legal shortcomings and do not breach the rights of third parties. By signing this contract, the Contractor confirms explicitly that it is authorised to perform the contractual services for the Customer according to this contract, and that the Customer shall acquire without restrictions all the rights to the contractual services agreed in this contract.
- 15.2 The Contractor shall ward off claims asserted by third parties for the breach of property rights against the Contractor, the Customer or other third parties immediately and at its own expense and risk. Should a third party raise litigation proceedings against the Contractor, it must inform the Customer of this in writing immediately. If the third party asserts claims directly against the Customer, the Contractor shall participate in the dispute upon the first request by the Customer in accordance with the options offered by the relevant legal procedure or shall assume complete responsibility for the dispute. The Contractor shall also accept all of the costs, including payment of damages, reasonable legal costs, etc., incurred to the Customer from the conduct of a case or a potential out-of-court settlement of the legal dispute and shall indemnify the Customer in full. In the event of an out-of-court settlement, the Contractor must make the agreed payment to the third party if it has agreed to this in advance.
- 15.3 If the property right claims asserted make it impossible or difficult for the Customer to utilise the contract performance in full or in part without any restrictions, the Customer shall have the option of demanding that the Contractor either (i) change its services so that they no longer breach third-party rights but still correspond to the contractual scope of services; or (ii) purchase a licence from the third party at the expense of the Contractor; or (iii) withdraw the services and reimburse the Customer for all of the costs and expenditure paid out for this. If the Contractor does not implement any of these options within an appropriate period of time, the Customer shall be entitled to withdraw from the contract with retroactive effect from the time at which the contract was concluded ("ex tunc" termination) and demand payment of damages. The consequences of such a withdrawal are based on the provisions set out in Article 2: Deadlines and defaults. The Contractor must in this instance indemnify the Customer in full.

Article 16: Warranty

- 16.1 In its capacity as a specialist and knowing the intended purpose of the contractual performance agreed in Article 1: Contractual performance and price, the Contractor accepts the warranty, that these correspond in every respect to the contractual conditions according to the technical specifications as set out in Annex II as well as according to the terms of acceptance as set out in Article 1: Contractual performance and price in all parts and are suitable for the agreed and expected use.
- 16.2 The warranty shall comprise that the Customer is free to choose from the following options: (a) the Contractor shall rectify all shortcomings that arise as a result of poor information bases, incorrect processing or a defective design free of charge following the acceptance of the contractual performance before the expiry of the warranty within 30 days or have these rectified by a third party with the written consent of the Customer (rework); (b) the Customer shall deduct an amount that corresponds to the reduced value from the compensation paid to the Contractor; or (c) the Customer may withdraw from the contract free of charge. If a rework or a replacement delivery is unsuccessful, the Customer may assert the other aforementioned warranty rights again. In each instance, the Customer reserves the right to claim for compensation. Any additional costs shall likewise be borne by the Contractor, as well as costs that the Customer incurs as a result of non-availability or delayed availability.
- 16.3 The warranty period is 24 months from the date of issued approval.
- 16.4 The Customer shall provide written notification of any defects that occur during the warranty period within 30 days of the discovery of the defect. The Contractor shall be liable – even once the warranty has expired – for any defects that occurred during the warranty period and for which notification was provided by the Customer within 30 days of the expiry of the warranty.
- 16.5 If the contractual performance cannot be utilised as intended due to the defect that occurs, the warranty period shall be suspended until the Customer confirms that this defect has been successfully rectified.
- 16.6 The warranty period for replaced or repaired parts/systems starts to run again and lasts until the expiry of the warranty for the overall system, but at least 12 months from the date on which the replacement or repairs took place or the acceptance/approval of the repaired or performed service.
- 16.7 All of the Contractor's costs for the warranties shall be included in the compensation in accordance with Article 1: Contractual performance and price.
- 16.8 If a defect is so serious that it cannot be rectified within an appropriate period of time and the contractual services cannot be used for their specified purpose or such use is considerably impaired, the Customer shall be entitled to reject the acceptance/approval or use of the defective part and, if it considers a partial acceptance/approval or partial use to be unreasonable, withdraw from the contract. The consequences of such a withdrawal shall be determined by the rules of contract withdrawal owing to default in accordance with Article 2: Deadlines and defaults. We reserve the right to assert claims for compensation.

Article 17: Liability

- 17.1 Each party must conclude insurance policies for the personnel used to fulfil the contract (all types of social security contributions and liability insurance where necessary).
- 17.2 For any damage that agents or personnel of one party cause to the other party or their agents or personnel during the fulfilment of the contract, the party causing the damage shall only be liable in the event of unlawful intent or gross negligence on the part of its agents or personnel, including auxiliary personnel and vicarious agents.
- 17.3 The Contractor shall be liable for both contractual and non-contractual damage that occurs as a result of unlawful intent or gross negligence without limitation.
- 17.4 The Contractor shall not be indebted to the Customer for compensation to cover any losses of profit.

Article 18: Rights to the work product (intellectual property)

- 18.1 All rights to the results of the contractually agreed services, namely property rights, proprietary rights, intellectual property rights (in particular but not conclusively for inventions, expertise, copyrights and other intangible or industrial property rights, regardless of whether these are registered or not), including the right to apply for property rights as well as the right to change and transmit property rights to third parties are hereby transferred to the Customer without further costs. This also applies for the property rights and copyrights to cost estimates, drawings, brochures, worksheets, etc.

Article 19: Utilisation of rights to the work product (intellectual property) and the intangible property rights by the Contractor

- 19.1 The Contractor shall only be entitled to commercially utilise or have utilised in any manner the rights to the work result, the intangible property rights as set out in Article 18: Rights to the work product (intellectual property) to the development results, provided that prior written consent has been given by the Customer.
- 19.2 In the event of commercial utilisation, the Contractor commits to full or partial reimbursement of the financial services provided by the Customer to the Contractor in connection with this contract.
- 19.3 If important reasons (such as military confidentiality interests) prevent such commercial utilisation, the Customer is entitled to refuse consent for commercial utilisation definitively or at least for a certain period of time. In the event of a refusal, the Contractor shall waive the right to assert any claims for damages against the Customer.

Article 20: Right of withdrawal of the Customer

- 20.1 The Customer is entitled, in addition to the rights of withdrawal granted to it in this contract, to withdraw from this contract at any time either partially or completely. The Customer will inform the Contractor of any such withdrawal in writing.
- 20.2 In such a case, the Contractor shall be entitled to compensation for all of the work carried out, any expenditure declared and an appropriate profit margin, provided that the withdrawal is not the fault of the Contractor. The Contractor shall in this regard be responsible for exercising a duty to mitigate damages.
- 20.3 There is no entitlement to lost profits for the part of the contract that is no longer to be performed.
- 20.4 All withdrawal costs must be justified and documented in full by the Contractor. The payments made by the Customer must not exceed the amount that the Contractor would be entitled to for the full performance of the contract.

20.5 The Customer shall only be obliged to pay claims in accordance with Art. 20.2 if the Contractor transfers the work commenced to the Customer, free from any rights or claims of third parties.

Article 21: Relinquishment and pledging

21.1 The rights and obligations of the Contractor arising from this contract may neither be relinquished nor pledged without the prior written approval of the Customer.

Article 22: “Most favourable” principle

- 22.1 Should the Contractor have awarded more favourable prices or conditions to third parties for comparable contractual services subject to comparable requirements during the term of this contract or will do so after the end of this contract, the Contractor shall reduce the prices and relax the conditions set out in Article 1: Contractual performance and price without being asked to do so and reimburse the Customer with the difference for any work carried out.
- 22.2 If the Contractor does not comply with this obligation, the Customer shall be entitled to offset the difference that results from the price comparison or the comparison of the conditions against the Contractor’s receivables or to charge the Contractor this difference.

Article 23: Information protection, confidentiality

23.1 Confidentiality shall be observed in accordance with Section 13 of Annex I.

Article 24: Publications and information

- 24.1 Publications in the media (the press, television, radio, the trade press, the Internet, advertising, etc.) about the contract, the contractual performance and the use with Swiss federal agencies shall require the advance written approval of the requesting unit both during and after the fulfilment of the contract.
- 24.2 This approval shall also be required after the respective agreements have come to an end.

Article 25: Procedural principles

- 25.1 When providing services in Switzerland the Contractor shall comply with the rules on health and safety regulations and working conditions at the place of provision. It shall ensure gender equality in terms of salary and shall confirm this by means of a self-declaration on the official form entitled “Compliance with working conditions, workplace health and safety regulations and requirement of equal pay for men and women: Declaration by the supplier” (www.logib.ch). Working conditions will be deemed to be those set out in the collective bargaining agreements and regular employment contracts or, where there are none, the actual working conditions standard for the location and/or industry. The Contractor must require sub-suppliers to contractually commit to compliance with the above principles. The Contractor is solely responsible for requesting the permits required for its staff working in Switzerland and obtaining these in good time. Particular care must be taken when staying for more than eight days per calendar year. Under the “Fact sheet: Posting Foreign Workers to Switzerland” (IMS 60197), the Customer shall be responsible for submitting the questionnaire (step 1 in the fact sheet) for the visit to the relevant cantonal immigration office. The Customer must also check whether the nationality in question requires a visa application (step 2 in the fact sheet).
- 25.2 Should the Contractor not comply with the procedural principles as set out in Art. 25.1 it shall be liable to pay a contractual penalty. This is 10% of the value of the contract, not

less than CHF 3,000 and not more than CHF 100,000. Any other monetary penalties incurred outside this Contract (such as fines) shall also be borne by the Contractor.

Article 26: Non-solicitation agreement (no conflict of interests)

- 26.1 By signing this contract, the Contractor confirms that the fulfilment of the contractual performance will not result in any current or potential conflicts of interest and does not believe any will come to pass. During the fulfilment of this contract, the Contractor shall to the best of its knowledge and belief protect the interests of the Customer at all times and without limitation.
- 26.2 The Contractor shall refrain from enticing the Customer's employees away in any manner.
- 26.3 Should the Contractor breach the provisions set out in this article, it shall be liable to pay a contractual penalty that is immediately due and equivalent to 10% of the value of the contract, but not less than CHF 3,000 and not more than CHF 100,000, for each individual breach. The payment of the contractual penalty shall not release the Contractor from its obligation to fulfil this provision. The Customer shall be entitled to assert further claims for damages beyond the contractual penalty.
- 26.4 Regardless of the Contractor paying the contractual penalty as set out in Article 26.3, in the event of a breach of the provisions set out in this article, the Customer shall be entitled to withdraw from the contract with retroactive effect from the time at which the contract was concluded ("ex tunc" termination) and demand the payment of damages. The consequences of such a withdrawal are based on the provisions set out in Article 2: Deadlines and defaults.

Article 27: Corruption prevention

- 27.1 The Contractor shall comply with the regulations set out in Swiss corruption law in the provision of the contract performance. In the event of any violations of the regulations set out in Swiss corruption law within the provision of the contract performance, the Customer shall be entitled to withdraw from the contract with retroactive effect from the time at which the contract was concluded (“ex tunc” termination) and demand the payment of damages. The consequences of such a withdrawal are based on the provisions set out in Article 2: Deadlines and defaults.
- 27.2 The Contractor is obliged to take measures to avoid corruption in the provision of the contractual performance. This includes the designation of a reporting office and the protection of informants. The Contractor shall inform the Customer without undue delay if it has knowledge or a concrete suspicion of cases of corruption that are related to the provision of the contractual service. The Contractor shall not be disadvantaged if it provides information on corruption on the part of the Customer to the whistle-blowing platform of the Swiss Federal Audit Office.

Article 28: Contract structure and contract annexes

- 28.1 The Annexes listed below form an integral part of this contract:

| | |
|------------|--|
| Annex I: | General Terms and Conditions of the Swiss Government for procuring goods, issue: September 2016, Status January 2021 |
| Annex II: | Technical specifications according to publication SIMAP XXX of XXX |
| Annex III: | Offer/Contractor’s price list of XXX |

- 28.2 Where the contract and the annexes conflict with one another, the provisions of the contract take precedence over those of the Annexes.
- 28.3 Should the individual Annexes conflict, the Annex with the lower Roman ordinal numeral shall take precedence.

Article 29: General contract amendments

- 29.1 Any amendments or additions to this contract shall only be valid if they are agreed in the form of countersigned addenda to the contract.

Article 30: Option for subsequent procurements

- 30.1 **Option “Time delay” according to price sheet (Annex III):** The Contractor is obliged, upon request by the Customer, to provide the contractual performance specified in Article 1: Contractual performance and price, at the prices and conditions set out in Article 1.2 of twice a year from 01/01/2024 to 31/12/2024 and 01/01/2025 to 31/12/2025 respectively. The redemption of the option is accompanied by a price ceiling increase of CHF **XX**, excluding VAT, per year.
- 30.2 The Contractor is no longer bound to its obligation as set out in Article 30.1 if the Customer does not inform it in writing by 30/06/2023 or 30/06/2024 at the latest that it wants to activate this option.
- 30.3 **Option “More frequent deliveries” according to price sheet (Annex III):** The option “More frequent deliveries” according to price sheet (Annex III) can be sourced at any time during the basic runtime or during the option runtime. This option is accompanied by a price ceiling increase of CHF **XX**, excluding VAT, per year.
- 30.4 The Customer shall also be entitled to inform the Contractor at any time, should it ultimately not want to exercise the option. In such a case or should the option period come to an end without the option being exercised, the Contractor shall not be entitled whatsoever to assert a claim for any kind of compensation against the Customer. If the Contractor provides any services that have not been requested by the Customer during the option period, these shall be at the risk and expense of the Contractor.

Article 31: Severability clause

- 31.1 In the event that one or more provisions of this contract should prove invalid or unenforceable or become so after signature, this shall be without prejudice to the validity of the rest of the contract.
- 31.2 The provision which is invalid or unenforceable shall be replaced with one which is valid and enforceable and comes as close as possible to the economic intention of the parties reflected in the provision that was invalid or unenforceable. The above shall also apply accordingly to any omissions in the contract.

Article 32: Establishment of claims

- 32.1 Unless otherwise stipulated in the provisions of this Contract, failure by the Customer to enforce any contractual claim or legal remedy shall not be deemed a waiver of such a claim or remedy and shall not release the Contractor from any subsequent performance of such an obligation or of any performance or fulfilment of any of its other obligations under this Contract.

Article 33: Applicable law, place of jurisdiction

- 33.1 In the creation, execution and interpretation of this contract and its annexes, its provisions are authoritative and subsidiary to those of Swiss law, excluding the provisions governing the conflicts of laws. Application of the General Terms and Conditions of Business of the Contractor and the United Nations Convention on Contracts for the International Sale of Goods are expressly waived.
- 33.2 The ordinary courts of Bern shall have jurisdiction over all disputes arising from or in connection with this contract.

Article 34: Entry into force

- 34.1 This contract shall enter into force once signed and dated by both parties.
- 34.2 The electronic signatures on this contract are based on the declaration of consent of **XXX**.

Place: **XXX**, Date: **XXX**

Name of Contractor

XXX
Title

XXX
Title

Place: **XXX**, Date: **XXX**

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Commercial Services specialist area

XXX
XXX

XXX
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